

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Carrier Current Systems, including	)	ET Docket No. 03-104
Broadband over Power Line Systems	)	
	)	
Amendment of Part 15 Regarding New	)	ET Docket No. 04-37
Requirements and Measurement Guidelines	)	
for Access Broadband Over Power Line	)	
Systems	)	

**COMMENTS OF  
THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”), by its attorneys, submits the following comments in the above-captioned proceeding.

NCTA is the principal trade association of the cable television industry. Its members provide video programming, broadband Internet and other services throughout the United States. NCTA also represents programmers and equipment suppliers to the cable television industry.

**I. THE COMMERCIAL INTRODUCTION OF EMERGING BROADBAND SERVICES SUCH AS ACCESS BROADBAND OVER POWER LINE (“BPL”) STRENGTHENS THE CASE FOR REGULATING ALL BROADBAND SERVICE OFFERINGS WITH A “LIGHT TOUCH”**

In its Notice of Inquiry on BPL technologies and systems, the FCC sought comments “... to assist the Commission in reviewing its Part 15 rules to facilitate the deployment of Access BPL while ensuring that licensed services continue to be protected.”<sup>1</sup> The Commission now seeks to amend its Part 15 rules. The agency seeks “to adopt new requirements and

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<sup>1</sup> *Inquiry Regarding Carrier Current Systems, including Broadband over Power Line Systems*, Notice of Inquiry, 18 FCC Rcd 8498 (2003).

measurement guidelines”<sup>2</sup> for carrier current systems expected to be capable of providing access to broadband services by means of electric power lines. The Commission reasons that “because power lines reach virtually every home and community in the country, we believe that these new systems ... could play an important role in providing additional competition in the offering of broadband services to the American home and consumers, and in bringing Internet and high-speed broadband access to rural and underserved areas.”<sup>3</sup>

For over a decade, and in its efforts to enact the 1996 Telecommunications Act, the cable industry has urged the government to adopt a pro-competitive approach to authorize new services and to facilitate regulatory conditions conducive to the participation of new providers of existing services. Access BPL presents an opportunity to further expand competitive choices for broadband consumers. We support the Commission’s focus on developing a regulatory framework consistent with this “pro-competitive, deregulatory”<sup>4</sup> approach.

The Commission’s diligent pursuit of that approach has made possible cable’s investments in and the deployment of competitive broadband services. The cable industry competes for residential Internet customers with providers of DSL services, satellite high-speed data services, dial-up services and other Internet offerings.<sup>5</sup> Providers of Internet services compete for customers by offering different speeds of service, service features, prices, and installation arrangements. The extensive advertising of these services in a wide variety of media is compelling evidence of the competitiveness of residential Internet services.

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<sup>2</sup> *Carrier Current Systems, including Broadband over Power Line Systems, Notice of Proposed Rulemaking*, FCC 04-29, rel. Feb. 23, 2004, at ¶ 1 (“Notice”).

<sup>3</sup> *Id.*

<sup>4</sup> H.R. Conf. Rep. No. 104-458, Telecommunications Act of 1996, 104<sup>th</sup> Cong., 2d. Sess. 1 (1996).

<sup>5</sup> See “No Wires,” *Business Week*, Apr. 26, 2004, at 95.

Over the last decade, cable companies have invested more than \$85 billion in risk capital to upgrade their networks to make these facilities capable of offering new services such as high-speed Internet services to residential customers. The introduction, widespread deployment, and enhancement in speed of cable modem service, coupled with the increasingly versatile array of content choices over the broadband cable modem service, has been equally significant in changing the way in which consumers access all sorts of electronically-delivered information.

The cable industry took the initial risks associated with the investment, deployment and operation of broadband Internet services. These risks were undertaken despite widespread consumer acceptance of narrowband Internet services, and uncertain demand for broadband services. If the cable industry had not taken these steps, broadband deployment and usage would have proceeded much more slowly in the United States.

Once the cable industry demonstrated consumer demand for broadband services, others followed. Local telephone companies are in the midst of a major effort to catch up with the cable industry and make their facilities capable of offering broadband Internet. DBS operators, through joint ventures with major telcos and independently, are also offering broadband Internet services. Electric power companies are now taking steps to enter the fray, as are wireless providers, consumer electronic manufacturers (using unlicensed spectrum) and others.

The cable industry strongly supports the pro-competitive, deregulatory vision that Congress has set forth, and does not oppose the efforts of other facilities-based providers to offer competitive services. The prospect and marketplace presence of Access BPL will make an already competitive broadband Internet services marketplace even more competitive. As the Commission considers approaches for overseeing cable modem service and other broadband Internet service offerings, it should take account of the anticipated competitive impact of Access

BPL, which provides further support for taking a “light” regulatory approach to cable modem service.<sup>6</sup>

**II. THE COMMISSION SHOULD ENSURE THAT PROVIDERS OF ACCESS BPL DO NOT CAUSE HARMFUL ELECTRICAL INTERFERENCE TO COMMUNICATIONS OR ENGAGE IN IMPROPER PRACTICES RELATING TO POLES, DUCTS, CONDUITS OR RIGHTS-OF-WAY**

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The offering of Access BPL by electric utilities raises two issues that the Commission’s Notice has identified in this proceeding. First, the Commission must acknowledge that Access BPL may pose risks of electrical interference to existing operators of communications systems, including cable operators, and take steps to mitigate these risks. And second, since the advent of Access BPL will give electric utilities new incentives to employ poles, ducts, conduits and rights-of-way under their ownership or control in ways that would disadvantage competitors dependent on pole attachments, the Commission should re-commit to vigilant enforcement of Section 224 of the Communications Act, which directs the FCC to oversee the arrangements by which electric utilities provide poles, ducts, conduits and rights-of-way to cable television systems pursuant to just and reasonable rates, terms and conditions.<sup>7</sup>

**A. The Commission Should Implement Procedures to Mitigate Harmful Interference Caused By BPL Operations**

The Commission recognizes that improper operation of BPL systems may result in emissions that exceed the Part 15 emission limits.<sup>8</sup> Existing operations need to be protected against harmful interference.

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<sup>6</sup> See Comments of the National Cable & Telecommunications Association, CS Docket No. 02-52, Jun. 17, 2002; Reply Comments of the National Cable & Telecommunications Association, CS Docket No. 02-52, Aug. 6, 2002.

<sup>7</sup> See 47 U.S.C. §224.

<sup>8</sup> Notice at ¶ 38.

The Commission also proposes to require Access BPL systems to operate in accordance with the agency's Part 15 non-interference conditions. This requirement is essential to prevent new Access BPL systems from causing harmful interference to existing operations. As a new entrant deploying a service that has been subjected to limited technical testing, Access BPL should be required to manage their systems such that harmful interference (regardless of the measured level) does not result.

The risk that Access BPL systems may cause harmful interference to other operations warrants the Commission's proposal "to subject Access BPL systems to a notification requirement similar to the notification requirements ... for power line carrier (PLC) systems."<sup>9</sup> NCTA supports the stated objective of notification "to ensure that the location of Access BPL systems and their operating characteristics are identified if harmful interference occurs and to facilitate interference mitigation and avoidance measures."<sup>10</sup>

Access BPL offers the prospect of providing residential consumers with another facilities-based broadband alternative. But these potential benefits of BPL should be evaluated within the context of potential risks to the operations of other communications systems.<sup>11</sup> The Commission should, therefore, adopt its proposals "to require that BPL systems and devices incorporate capabilities to mitigate harmful interference should it occur,"<sup>12</sup> and "to aid in the identification and resolution of harmful interference from Access BPL systems."<sup>13</sup>

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<sup>9</sup> *Id.* at ¶ 43 (*citation omitted*).

<sup>10</sup> *Id.*

<sup>11</sup> NTIA's recent study acknowledged the potential risk to existing operations posed by BPL. *See* "Potential Interference From Broadband Over Power Line (BPL) Systems to Federal Government Radio Communications at 1.7-80 MHz," Phase 1 Study, NTIA Technical Reports 04-413, Vol. 1, Apr. 2004.

<sup>12</sup> Notice at ¶ 1.

<sup>13</sup> *Id.*

**B. The Commission Should Reaffirm Its Commitment to the Enforcement of Procedures to Deter Anticompetitive Utility Practices Harmful to Cable Systems**

The offering of Access BPL by electric utilities requires the Commission to exercise increased scrutiny of utility practices relating to the provision to cable systems of poles, ducts, conduits and rights-of-way. We ask the Commission to commit to provide the resources necessary to oversee any such issues that may arise from the telecommunications activities of utilities.

Pursuant to Section 224 of the Communications Act, the FCC has played an essential role in facilitating working relationships between the utilities that control access to the necessary facilities and rights-of-way, and cable companies that need these facilities to provide communications services to their subscribers.<sup>14</sup>

Despite the presence of the statutory framework and the Commission's efforts at oversight, utilities have made repeated attempts to impose excessive rates and to implement unreasonable practices.<sup>15</sup> The Commission, in response to complaints, has issued numerous orders over two decades, in the vast majority of instances reining in the utilities' practices.<sup>16</sup>

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<sup>14</sup> See 47 U.S.C. § 224.

<sup>15</sup> For example, as the Commission noted several years ago, "From 1979, when the first pole attachment complaint was filed with the Commission, to 1991, approximately 246 pole attachment complaints were filed. From 1991 through 1996, approximately 44 such complaints were filed." *Implementation of Section 703(e) of the Telecommunications Act of 1996*, 13 FCC Rcd 6777, at 6784, n. 37 (1998).

<sup>16</sup> See, e.g., *Nevada State Cable Ass'n v. Nevada Bell, Order*, PA-96-001 (Jun. 18, 1998); *TCG Dallas v. Texas Util. Elec. Co.*, 13 FCC Rcd 7298 (1998); *Mile Hi Cable Partners, L.P. v. Public Service Co. of Colorado*, 14 FCC Rcd 3244 (1999); *Cable Texas, Inc. v. Entergy Services, Inc.*, 14 FCC Rcd 6647 (1999); *Time Warner Entertainment/Advanced-Newhouse Partnership v. Florida Power & Light Company*, 14 FCC Rcd 9149 (1999); *Kansas City Cable Partners v. Kansas Power & Light Company*, 14 FCC Rcd 11599 (1999); *Cavalier Telephone Co. v. Virginia Electric and Power Co.*, 2000 LEXIS 2933 (rel. Jun.. 7, 2000); *Teleport Communications Atlanta v. Georgia Power Company*, 17 FCC Rcd 19859 (2002).

Moreover, electric utilities have continued their efforts to engage in full-scale litigation to undo the congressionally-established administrative process. In particular, certain power utilities many of which are actively pursuing Access BPL development and deployment, have repeatedly challenged the constitutionality of pole attachment regulation, both as to the right to attach and the reasonable amount of payment for pole use.<sup>17</sup>

Electric utilities' pole attachment practices may be a sign that BPL requires even closer Commission scrutiny of utility pole, duct, conduit and right-of-way practices. If utilities provide broadband to residential customers, they will compete directly with cable companies and other entities that utilize their facilities. This direct competition, coupled with monopoly control over facilities that are essential to cable systems, may motivate utilities to employ even more aggressive tactics against cable companies' access to poles and conduits. Congress, in Section 224(g) of the Communications Act,<sup>18</sup> anticipated that utilities could provide communications in competition with cable companies, and others, and provided for additional oversight procedures in these circumstances.

## **CONCLUSION**

The cable industry welcomes new facilities-based participants, including Access BPL, to the highly competitive broadband marketplace. But the Commission should acknowledge that the offering of broadband by electric utilities poses unique regulatory challenges. Steps should be taken to protect existing users of electric utility facilities and rights-of-way from harmful

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<sup>17</sup> See, e.g., *FCC v. Florida Power Corp.*, 480 U.S. 245 (1987); *National Cable & Telecommunications Ass'n, Inc. v. Gulf Power Co.*, 534 U.S. 327 (2002). See also *Georgia Power Co. v. Teleport Communications Atlanta, Inc.*, 346 F.3d 1043 (11<sup>th</sup> Cir. 2003); *Alabama Power Co. v. FCC*, 311 F.3d 1357 (11<sup>th</sup> Cir. 2002), *cert. denied*, 124 S. Ct. 50 (2003); *Southern Co. Servs. v. FCC*, 313 F.3d 574 (D.C. Cir. 2002); *Southern Company v. FCC*, 293 F.3d 1338 (11<sup>th</sup> Cir. 2002); *Gulf Power Co. v. United States*, 998 F. Supp. 1386 (N.D. Fla. 1998), *aff'd*, 187 F.3d 1324 (11<sup>th</sup> Cir. 1999).

<sup>18</sup> 47 U.S.C. § 224(g).

interference, and from the use of poles, ducts, conduits and rights-of-way under utility ownership or control in an anticompetitive manner.

Respectfully submitted,

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